

STATE OF MICHIGAN
COURT OF APPEALS

WAYNE RULE, RAISA RULE, and WANDA L.
RULE,

UNPUBLISHED
January 17, 2012

Plaintiffs-Appellants,

v

US BANK, N.A.,

No. 301874
Hillsdale Circuit Court
LC No. 10-000344-CH

Defendant-Appellee.

Before: DONOFRIO, P.J., and STEPHENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

Plaintiffs appeal as of right the circuit court's order granting summary disposition for defendant under MCL 2.116(C)(10) in this mortgage foreclosure dispute. Because plaintiff Wanda L. Rule had no homestead interest in the property as a matter of law, we affirm.

In 1985, plaintiffs Wayne and Raisa Rule, husband and wife, acquired the property at issue in this case and thereafter built their home on the property. In 1999, their adult daughter, plaintiff Wanda L. Rule, was injured in a snowmobile accident that rendered her a quadriplegic, paralyzed from her neck down. After the accident, Wanda moved into her parents' home. She received an insurance settlement, from which a significant portion of the proceeds were used to modify her parents' home to accommodate her physical needs. For example, doorways were widened and a wheelchair lift was installed to permit Wanda to access a specially equipped bathroom. Wanda is now 40 years old and requires full-time care, which her mother provides.

In July 2006, Wayne and Raisa executed a mortgage on the property in favor of Aames Funding Corporation, d/b/a Aames Home Loans ("Aames"). Aames thereafter assigned its interest in the mortgage to Ocwen Loan Servicing, L.L.C., which in turn assigned the mortgage to defendant, U.S. Bank, N.A. On February 27, 2009, after Wayne and Raisa defaulted on their loan, the property was sold at a sheriff's sale. The six-month redemption period expired on August 27, 2009, without redemption having been made.

On May 27, 2010, plaintiffs filed a complaint against defendant to determine their interests in the property.¹ In particular, plaintiffs alleged that Wanda had an unrecorded homestead interest in the property by virtue of the modifications that had been made to the home to accommodate her physical circumstance. Plaintiffs further alleged that Aames, defendant's predecessor in interest, had notice of Wanda's property interest. Defendant moved for summary disposition, arguing that Wanda had no interest in the property and that plaintiffs' claim that Wanda had an unrecorded interest that predated and preceded the mortgage lacked merit. The trial court agreed, and granted defendant's motion.

We review de novo a trial court's decision on a motion for summary disposition. *Spiek v Dep't of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition under MCR 2.116(C)(10) tests the factual support of a claim and should be granted if no genuine issue of material fact exists for trial. *Id.* In reviewing a motion under subrule (C)(10), we consider the pleadings, affidavits, depositions, admissions and other evidence submitted by the parties in a light most favorable to the nonmoving party. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004).

Plaintiffs argue that Wanda has a protected homestead interest in the property. Pursuant to the Michigan Constitution and statutory law, a homestead is protected from forced sale, except in cases of a valid mortgage on the property duly signed by both spouses if the debtor is married. Const 1963, art 10, § 3; MCL 600.6023(1)(h). The homestead protection "extends to any person owning and occupying any house on land not his or her own and which the person claims as a homestead." MCL 600.6023(1)(h). "Owning" has been liberally interpreted beyond fee simple ownership to include joint tenants, possessors of land under land contracts, and a lessee who erected and occupied a dwelling on a premises. See *Irvine v Irvine*, 337 Mich 344, 351; 60 NW2d 298 (1953); *Maatta v Kippola*, 102 Mich 116, 118; 60 NW 300 (1894); *Lozo v Sutherland*, 38 Mich 168 (1878). A homestead interest does not exist, however, in property, "the title to which is in another person." *Storey v Storey*, 275 Mich 675, 677; 267 NW 763 (1936).

Here, plaintiffs concede that Wanda does not own the property. Plaintiffs assert that if this Court determines that Wanda has a homestead interest, "it will derive from her rights as a tenant in her parents['] home" and her unique circumstances. However harsh the result, we must conclude that Wanda does not have a homestead interest in the property as a matter of law. Her parents own the property as joint tenants with rights of survivorship, and Wanda has no recorded interest. Her claim is one of equity based on the modifications made to the home. We are unaware of any law, and plaintiffs admit that there is no authority, recognizing a homestead interest in these or similar circumstances. We further note that Wanda is not a spouse whose signature was necessary for the execution of a valid mortgage under MCL 600.6023(1)(h). We

¹ Defendant initially filed a district court action to obtain possession of the property, and plaintiffs filed a counterclaim challenging the foreclosure on equitable grounds. The district court ordered that the case be removed to the circuit court to determine plaintiffs' equitable claim to the property.

decline to create new law that extends the protections of MCL 600.6023(1)(h) beyond the clear statutory language. *Koontz v Ameritech Servs, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002).

We also find as a matter of law that defendant did not neglect a duty to inquire as to any rights that Wanda may have had based on the modifications to the home. Defendant's mortgage was properly recorded, and defendant conducted a proper title search. "Michigan is a race-notice state, MCL 565.29 . . . and owners of interests in land can protect their interests by properly recording those interests." *Lakeside Assoc v Toski Sands*, 131 Mich App 292, 298; 346 NW2d 92 (1983). If Wanda had an interest in the property, she should have recorded that interest. The modifications to the home were insufficient to provide notice of her claimed property interest. Defendant, having relied on the public record, cannot be bound by unrecorded intentions. *Id*.

Affirmed.

/s/ Pat M. Donofrio
/s/ Cynthia Diane Stephens
/s/ Amy Ronayne Krause